

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Civ. No. \_\_\_\_\_

GERALD PELLETIER, INC.,

Defendant.

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**COMPLAINT**

The United States of America, by authority of the Attorney General and acting at the request of the Administrator of the Environmental Protection Agency (EPA), alleges:

NATURE OF THE ACTION

1. This is a civil action brought under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9607(a), regarding the Hows Corner Superfund Site ("Site") in the Town of Plymouth, Maine. Plaintiff the United States seeks payment from defendant Gerald Pelletier, Inc. ("Pelletier") of costs incurred by the United States for response actions regarding the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and 1395, and 42 U.S.C. § 9613(b), because the claims arose in this district and the release or threatened release of hazardous substances occurred in this district.

DEFENDANT

4. Defendant Gerald Pelletier, Inc. is a Maine corporation with its corporate headquarters and principal place of business in Millinocket, Maine.

STATUTORY BACKGROUND

5. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as “response actions.” 42 U.S.C. §§ 9604(a), 9601(25).

6. Under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1):

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment . . .

7. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President’s delegate, as provided in operative Executive

Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

8. Under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3):

[A]ny person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances [a “generator” of hazardous substances]; . . .

shall be liable for--

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan . . .

#### GENERAL ALLEGATIONS

9. The Site comprises is located in the Town of Plymouth, Maine and encompasses approximately 17 acres.

10. Between approximately 1965 and 1980, George R. West, Jr., and his company, Portland Bangor Waste Oil (“PBWO”), operated a waste oil storage and transfer facility at the Site. PBWO stored and disposed of waste oil from various entities at the Site.

- a. On September 29, 1995, the facility was placed on the National Priorities List, 40 C.F.R. Part 300, Appendix B, which is a national list of hazardous waste sites posing a threat to human health and welfare and the environment. See 60 Fed. Reg. 50435, 50437. The National Priorities List has been established pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B).

11. As a result of the activities at the Site, there were and are releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and threats of continuing releases, of hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), into the environment at the Site.

12. The United States has incurred and will continue to incur response costs in responding to the releases or threatened releases of hazardous substances at the Site.

13. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Site. Such hazardous substances have been found at the Site.

14. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

#### CLAIM FOR RELIEF

15. Paragraphs 1 through 14 are realleged and incorporated herein by reference.

16. Pelletier is liable to the United States pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9797(a)(3), as a person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at a facility owned or operated by another party or entity and containing such hazardous substances.

17. The United States has taken response actions, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), as a result of the releases or threatened releases of hazardous substances at the Site.

18. The United States' response actions regarding the Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

19. The United States has incurred and will continue to incur costs of response, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to respond to the releases or threatened releases of hazardous substances at the Site, including enforcement costs in connection with this matter.

20. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Pelletier is jointly and severally liable to the United States for response costs incurred and to be incurred in connection with the Site.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Enter judgment in favor of the United States, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding Pelletier liable for all unreimbursed costs incurred by the United States with respect to the Site, plus interest accrued thereon; and

2. Grant the United States such other and further relief as the Court deems just and proper.

Respectfully Submitted,

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